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Attorneys for Defendant
**CARGILL MEAT
SOLUTIONS CORPORATION**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JASMINE LUVIANIO, on behalf of
herself and all others similarly situated

Plaintiff,

vs.

CARGILL MEAT SOLUTIONS
CORPORATION, a Delaware
Corporation;
And DOES 1 - 100, inclusive,
Defendants.

Case No.:

**DEFENDANT'S NOTICE OF
REMOVAL PURSUANT TO 28
U.S.C. §§ 1331, 1332(d)(2), 1441,
1446, AND 1453**

Complaint Filed: March 29, 2023

Removed: May 22, 2023

1 LEASE TAKE NOTICE that Defendant CARGILL MEAT SOLUTIONS
2 CORPORATION (“Defendant”), hereby removes to this Court the state court action
3 described below, pursuant to 28 U.S.C. §§ 1331, 1332(d)(2), 1441, 1446, and 1453. In
4 support thereof, Defendant states as follows:

5 **I. PLEADINGS, PROCESS AND ORDERS**

6 1. On March 29, 2023, this putative class action was commenced and is
7 currently pending against Defendant in the Superior Court of California, County of San
8 Joaquin as Case No. STK-CV-UOE-2023-0003094, entitled *JASMINE LUVIANIO, on*
9 *behalf of herself and all others similarly situated, Plaintiff, vs. CARGILL MEAT*
10 *SOLUTIONS CORPORATION, a Delaware Corporation; and DOES 1 - 100, inclusive,*
11 *Defendants.*

12 2. The Complaint asserted the following causes of action: (1) failure to pay
13 overtime wages; (2) failure to minimum wage; (3) failure to pay all wages upon
14 termination; (4) failure to provide accurate wage statements; (5) unfair competition
15 (**Exhibit A**, Complaint.)

16 **II. THIS COURT HAS JURISDICTION**

17 3. This Court has original jurisdiction over this action pursuant to the Class
18 Action Fairness Act of 2005 (“CAFA”) 29 U.S.C. § 1332(d), which vests the United
19 States district courts with original jurisdiction of any civil action: (a) that is a class
20 action with a putative class of more than a hundred (100) members; (b) in which any
21 member of a class of Plaintiff is a citizen of a State different from any defendant; and
22 (c) in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive
23 of interest and costs. 28 U.S.C. §1332(d). CAFA authorizes removal of such actions in
24 accordance with 28 U.S.C. §§ 1446 and 1453. As set forth below, this case meets all of
25 CAFA’s requirements for removal and is timely and properly removed by the filing of
26 this Notice.

1 4. Pursuant to 28 U.S.C. § 1446(a), a notice of removal must: (1) be signed
2 pursuant to Rule 11 of the Federal Rules of Civil Procedure, (2) contain a “short and
3 plain statement of the grounds for removal,” and (3) be accompanied by a copy of all
4 process, pleadings, and orders served on Defendant in the action.

5 **III. VENUE IS PROPER**

6 5. With respect to this petition for removal, venue is proper in this Court
7 pursuant to 28 U.S.C. sections 84(b), 1391 and 1446, this action was originally brought
8 in the Superior Court of California for the County of San Joaquin (Case No. STK-CV-
9 UOE-2023-0003094).

10 **IV. DEFENDANT SATISFIED THE REQUIREMENTS FOR REMOVAL**

11 **A. This Removal Petition is Timely**

12 6. Plaintiff personally served Defendant with the Summons and Complaint
13 on April 21, 2023, as is attested by Plaintiff’s Notice of Service of Process in **Exhibit**

14 **B.** Pursuant to 28 U.S.C. section 1446(b) and Federal Rule of Civil Procedure, Rule
15 6(a)(1)(C), a Notice of Removal is timely if filed within thirty (30) days after Defendant
16 was served with the initial pleading. *See Murphy Bros., Inc. v. Michetti Pipe Stringing,*
17 *Inc.*, 526 U.S. 344, 356 (1999)(30-day removal period runs from the service of the
18 summons and complaint). Here, 30 days from service on Defendant on April 21, 2023
19 is May 21, 2023, a Sunday. Fed.R.Civ.P. 6(a) extends the removal deadline to the next
20 day, so Defendant’s removal on May 22, 2023 is timely. *Wells v. Gateways Hosp. &*
21 *Mental Health Ctr.*, 76 F.3d 390 (9th Cir. 1996) (using Rule 6(a) to extend filing
22 deadline from thirtieth day, which landed on a Sunday, to the following Monday).

23 **B. The Procedural Requirements of Removal Are Met**

24 7. On May 22, 2023, prior to the filing of Defendant’s Notice of Removal,
25 Defendant filed and served an Answer to Plaintiff’s Complaint in San Joaquin Superior
26 Court. A true and correct copy of the Answer and the accompanying proof of service is
27 attached as **Exhibit C**.

1 8. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders
2 served upon Defendant are attached hereto as **Exhibit D** to this Notice of Removal (with
3 the exception of Plaintiff's Complaint, which is attached as **Exhibit A**.)

4 9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being
5 served upon counsel for Plaintiff and a "Notice to State Court and Adverse Parties of
6 Removal of Action" (to include a copy of this Notice of Removal and all Exhibits) will
7 be promptly filed with the Clerk of the Superior Court in San Joaquin County, and
8 served on all other parties to this action.

9 **V. THIS COURT HAS JURISDICTION UNDER CAFA**

10 10. In its decision in *Dart Cherokee Basin Operating Co. v. Owens*, 135 S.Ct.
11 547 (2014), the United States Supreme Court clarified the standards applicable to
12 notices of removal in CAFA cases, confirming a liberal standard in favor of removing
13 Defendant. Specifically the Supreme Court found that the similarity of language
14 between the removal statute and Rule 8(a) can only mean that the same liberal pleading
15 standards applied to complaints must also apply to notices of removal. *Id.* The Supreme
16 Court also held in *Dart* that a removing defendant is **not required** to include evidence
17 with its pleading in order to establish that the elements of federal subject matter
18 jurisdiction are met. *Id.* at 552-553. Only if the Court or another party challenges
19 jurisdiction should the Court require a removing defendant to prove, under the
20 applicable "preponderance" standard, that the jurisdictional requirements are met. "In
21 sum, as specified in § 1446(a), a defendant's notice of removal need include only a
22 plausible allegation that the amount in controversy exceeds the jurisdictional threshold.
23 Evidence establishing the amount is required by § 1446(c)(2)(B) only when the Plaintiff
24 contests, or the court questions, the defendant's allegation." *Id.* at 554. In addition, there
25 exists no "presumption against removal" in CAFA cases, because CAFA was
26 specifically enacted by Congress "to facilitate adjudication of certain class actions in
27 federal court." *Id.*

11. Under CAFA, federal district courts have original jurisdiction over a class action if (1) it involves 100 or more putative class members, (2) any class member is a citizen of a state different from any defendant, and (3) the aggregated amount in controversy exceeds \$5 million (exclusive of costs and interest). *See* 28 U.S.C. §§ 1332(d)(2), d(5), and (d)(6). CAFA applies to certain “class actions,” which the statute defines as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute.” 28 U.S.C. § 1332(d)(1)(B).

A. Plaintiff Asserts a Class Action Against Defendant

12. Plaintiff brings her lawsuit as a class action. The Complaint caption is titled “CLASS ACTION COMPLAINT FOR DAMAGES AND RESTITUTION.” Plaintiff states in the very first sentence that the case is a “Class Action pursuant to California Code of Civil Procedure § 382.” (**Exhibit A**, Complaint at Caption and ¶ 1.) Accordingly, CAFA applies. *See Bodner v. Oreck Direct, LLC*, No. C 0604756, 2006 WL 2925691, at *3 (N.D. Cal. Oct. 12, 2006) (CAFA applies where “Plaintiff’s complaint alleges that the action is a class action, and recites the prerequisites to a class action under . . . California Code of Civil Procedure Section 382”).

B. The Number of Putative Class Members Exceeds 100

13. Plaintiff seeks to represent three classes of current and former non-exempt employees of Defendant within the State of California through when the notice of the class action is provided to the class. (“Class”) (**Exhibit A**, Complaint at ¶ 14.)

14. Plaintiff’s Complaint alleges that there are over 100 class members. (**Exhibit A**, Complaint at ¶ 17.) Thus, as defined in the Complaint, the putative class exceeds 100.

C. Defendant is not a Governmental Entity

15. Under 28 U.S.C. § 1332(d)(5)(B), CAFA does not apply to class actions where “primary Defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief.”

1 16. Defendant is a corporation duly organized and existing pursuant to the laws
2 of the State of Delaware, with its principal place of business in the State of Kansas and
3 is not a state, state official or other government entity exempt from CAFA.

4 **D. There Is Diversity Between At Least One Class Member And Any**
5 **One Defendant**

6 17. CAFA's minimal diversity requirement is satisfied, inter alia, when "any
7 member of a class of Plaintiff is a citizen of a State different from any defendant." 28
8 U.S.C. §§ 1332(d)(2)(A); 1453(b). Minimal diversity of citizenship exists here because
9 Plaintiff and Defendant are citizens of different states.

10 18. Plaintiff states that she is a resident of California. (**Exhibit A**, Complaint
11 at ¶ 6.) Allegations of residency in a state court complaint can create a rebuttable
12 presumption of domicile supporting diversity of citizenship. *Lew v. Moss*, 797 F.2d 747,
13 751 (9th Cir. 1986); *see also State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519-
14 20 (10th Cir. 1994) (allegation by a party in state court complaint of residency "created
15 a presumption of continuing residence in [state] and put the burden of coming forward
16 with contrary evidence on the party seeking to prove otherwise"). Therefore, Plaintiff
17 is a citizen of California for diversity purposes.

18 19. Conversely, Defendant is not citizen of California. It is a citizen of
19 Delaware and Kansas. For diversity purposes, a corporation is deemed a citizen of its
20 state of incorporation and the state where it has its principal place of business. 28 U.S.C.
21 § 1332(c)(1). The principal place of business is "where a corporation's officers direct,
22 control, and coordinate the corporation's activities." *See Hertz Corp. v. Friend*, 130
23 U.S. 1181, 1192-93 (2010). At the time this action was commenced in state court,
24 Defendant was, and remains, a Delaware corporation with its principal place of business
25 in Kansas, where it has its corporate offices and headquarters and where Defendant's
26 executive and administrative functions are located.

20. Accordingly, the named Plaintiff is a citizen of a state different from Defendant, and diversity exists for purposes of CAFA jurisdiction. *See* 28 U.S.C. §§ 1332(d)(2)(A), 1453.

E. The Amount in Controversy Exceeds \$5,000,000¹

21. CAFA’s \$5,000,000 threshold for the “amount in controversy,” is not the same as the amount ultimately recovered. *Lara v. Trimac Transp. Servs. Inc.*, No. CV 10- 4280-GHK JCx, 2010 WL 3119366, at *3 (C.D. Cal. Aug. 6, 2010). Rather, in assessing the amount in controversy, courts must “assume that the allegations of the complaint are true and assume that a jury will return a verdict for the Plaintiffs on all claims made in the complaint.” *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002). The ultimate inquiry is what amount is put “in controversy” by the Plaintiffs’ complaint, not what a defendant will actually owe. *Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005). After all, “the amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant’s liability.” *Lewis v. Verizon Communications, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (citing *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008)). Additionally, “the amount in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated”); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (stating that “[t]he amount-in-controversy inquiry in the removal context is not confined to the face of the complaint”) (citations omitted).

22. Congress intended federal jurisdiction to be appropriate under CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the Plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought

¹ The alleged damage calculations set forth in the instant Notice of Removal are provided for purposes of removal only and based on the presumption of truth to which Plaintiff’s allegations are entitled. Defendant denies that Plaintiff or any putative class member is entitled to any relief whatsoever and expressly reserves the right to challenge Plaintiffs’ claims and their alleged damages at every stage of this case.

(e.g., damages, injunctive relief, or declaratory relief).” Senate Judiciary Committee Report, S. REP. 109-14 at 42. In addition, the Senate Judiciary Committee’s Report on the final version of CAFA makes clear that any doubts regarding the maintenance of interstate class actions in state or federal court should be resolved in favor of federal jurisdiction. S. REP. 109-14 at 42-43 (“[I]f a federal court is uncertain about whether ‘all matters in controversy’ in a purported class action ‘do not in the aggregate exceed the sum or value of \$5,000,000,’ the court should err in favor of exercising jurisdiction over the case ... **[Section 1332(d)] should be read broadly, with a strong preference that interstate class actions should be heard in federal court if removed by the defendant.**” (emphasis added))

23. In calculating the amount in controversy, the claims of class members may be aggregated to determine whether the amount in controversy has been satisfied. 28 U.S.C. § 1332(d)(6).

24. Plaintiff’s Complaint does not allege the total aggregate amount in controversy. (*See generally*, **Exhibit A**, Complaint.) However, as demonstrated herein, Plaintiff’s allegations, when accepted as true, place more than \$5,000,000 in controversy in this lawsuit. By demonstrating that the amount in controversy exceeds the CAFA threshold, Defendant in no way concedes the validity of Plaintiff’s claims in any respect or the likelihood that Plaintiff will obtain class certification or recover anything.

25. Plaintiff alleges that Defendant engaged in a pattern and practice of failing to pay wages for all time worked, including overtime wages, as a result of requiring Plaintiff and other California non-exempt employees to wait in line for COVID-19 temperature checks prior to the start of their shift. (**Exhibit A**, Complaint at ¶ 2.)

26. Plaintiff was formerly employed at Defendant’s Fresno facility. At the Fresno facility, Defendant conducted COVID screening including temperature checks of those entering the facility, starting on March 3, 2020 and ending on August 12, 2022.

1 Plaintiff alleges that Defendant did not compensate her and other non-exempt
2 employees for this COVID screening time. (**Exhibit A**, Complaint at ¶ 10.)

3 27. With respect to her third cause of action for waiting time penalties, Plaintiff
4 alleges, without qualification, that Defendant failed to pay Plaintiff and other Class
5 members all their wages earned and unpaid prior to termination, as a result of
6 Defendant's purported practice of failing to paying for all hours worked, i.e., unpaid
7 COVID screening time. (**Exhibit A**, Complaint at ¶ 38.) Plaintiff alleges that Defendant
8 is liable to Plaintiff and the putative class members for waiting time penalties pursuant
9 to Labor Code § 203, in the form of continued compensation for thirty work days.
10 (**Exhibit A**, Complaint at ¶ 41.) The statute of limitations on Plaintiff's waiting time
11 penalties claim is three years. *See Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389, 1404
12 (2010); see also Cal. Civ. Proc. Code § 338(a).

13 28. Based on a review of Defendant's records, Defendant had at least 1,021
14 putative class members who worked in Fresno during the COVID Screening Time
15 (March 3, 2020 through August 12, 2022) and who terminated their employment (either
16 voluntarily or involuntarily.) Using the average rate of pay for these employees
17 according to Defendant's pay data, which is approximately \$17.42 per hour, as the
18 applicable rate of pay, and assuming a conservative average shift length of 8 hours, the
19 amount in controversy for Plaintiff's waiting time claim alone is more than
20 **\$4,268,596.80**, based on the calculation of 1,021 putative class members terminated x
21 an average rate of pay of \$17.42 per hour x 8 hours x 30 days. Thus, the amount in
22 controversy for Plaintiff's claims is near the \$5,000,000 CAFA threshold, on the third
23 cause of action only, not even accounting for the amounts at issue for Plaintiff's other
24 causes of action.

25 29. With respect to her fourth cause of action for wage statement penalties,
26 Plaintiff alleges, without qualification, that Defendant failed to provide Plaintiff and
27
28

1 other Class Members with accurate wage statements in violation of Cal. Labor Code §
2 226. (**Exhibit A**, Complaint at ¶¶ 49-52.)

3 30. Based on a review of Defendant's records, Defendant had at least 1,022
4 putative class members who worked in Fresno during the entire period of the one year
5 statute of limitations for wage statement violations and during the COVID screening
6 period in Fresno (March 29, 2022 through August 12, 2022), and were issued
7 approximately 10 wage statements each during that time period. Wage statement
8 violations carry penalties of \$50 for an initial violation, and \$100 for any subsequent
9 violations, up to a maximum of \$4,000. Cal. Labor Code § 226(e). Thus, the amount in
10 controversy for wage statement violations for these 1,022 putative class members is
11 **\$970,900** ($1,022 \times \$50 + 1,022 \times 9 \times \100). This does not account for other putative
12 class members, who were also issued wage statements during the one year statute of
13 limitations for wage statement violations and the COVID screening period but may not
14 have worked during the entire period.

15 31. Thus, the total **minimum** amount placed in controversy by Plaintiff's
16 Complaint is over \$5,000,000, only on Plaintiff's Third and Fourth Causes of Action
17 (\$5,239,496.80).

18 Attorney's Fees

19 32. Attorneys' fees are also includable in the amount in controversy where the
20 underlying statute authorizes an award of fees. *Lowdermilk v. U.S. Bank Nat'l Ass'n*,
21 479 F.3d 994, 1000 (9th Cir. 2007) *overruled on other grounds by Standard Fire Ins.*
22 *Co. v. Knowles*, 133 S.Ct. 1345 (2013). Plaintiff is seeking reasonable attorneys' fees.
23 (**Exhibit A**, Complaint at Prayer for Relief, K.) The Ninth Circuit has recognized 25%
24 as an appropriate benchmark for fee awards in class action cases. *See Hanlon v.*
25 *Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Under that benchmark, and based
26 on the demonstrated amount in controversy on the fourth cause of action, it is reasonable
27 to place the attorneys' fees in controversy at a minimum of \$1,339,799.20. Adding that
28

1 amount to the previously calculated values only serves to underscore the conclusion that
2 this case easily exceeds the \$5,000,000 CAFA threshold.

3 **VI. CONCLUSION**

4 33. This Court has original jurisdiction over Plaintiff's claims by virtue of the
5 Class Action Fairness Act. To the extent that this Court lacks original jurisdiction over
6 any of Plaintiff's claims, it has supplemental jurisdiction over those claims. This action
7 is thus properly removable to federal court pursuant to 28 U.S.C. § 1441. In the event
8 this Court has a question regarding the propriety of this Notice of Removal, Defendant
9 requests the opportunity to submit evidence, points and authorities supporting the
10 removal of this action.

11 WHEREFORE, Defendant removes the above-action to this Court.

12
13 Dated: May 22, 2023

COZEN O'CONNOR

14
15 By: /s/ Brett Greving
16 Jason E. Barsanti
17 Brett Greving
18 Attorneys for Defendant
19 **CARGILL MEAT SOLUTIONS**
20 **CORPORATION**
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27
28

EXHIBIT A

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6 Attorneys for Plaintiff,
JASMINE LUVIANO, on behalf
of herself and all others similarly situated
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN JOAQUIN

10 STK-CV-UOE-2023-3094

11 JASMINE LUVIANO, on behalf of herself
and all others similarly situated)

12 Plaintiffs,)

13 v.)

14 CARGILL MEAT SOLUTIONS)
15 CORPORATION, a Delaware corporation;)
16 and DOES 1 through 100, Inclusive)

17 Defendants.)
18)
19)
20)
21)

CASE NO..

CLASS ACTION COMPLAINT FOR
DAMAGES AND RESTITUTION

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO MINIMUM WAGE;
3. FAILURE TO PAY ALL WAGES UPON TERMINATION;
4. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS; and
5. UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

22 COMES NOW plaintiff JASMINE LUVIANO (hereinafter "Ms. Luviano" and/or
23 "Plaintiff") on behalf of herself and all others similarly situated, and alleges as follows:

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GENERAL ALLEGATIONS

INTRODUCTION

1
2
3 1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on
4 behalf of Plaintiff and all other current and former similarly situated employees employed by or
5 formerly employed by CARGILL MEAT SOLUTIONS CORPORATION (“CARGILL”) and any
6 subsidiaries or affiliated companies, within the State of California (hereinafter collectively referred
7 to as “Defendants”)

8 2. For at least four (4) years prior to the filing of this action and through to the
9 present, Defendants on multiple occasions have had a pattern and practice of failing to pay wages
10 for all time worked, including overtime wages, as a result of requiring Plaintiff and other
11 California non-exempt employees to wait in line for COVID-19 temperature checks prior to the
12 start of their shift.

13 3. Plaintiff, on behalf of herself and all other similarly situated employees, brings this
14 action pursuant to, including but not limited to, California Labor Code §§ 200, 201, 202, 203, 226,
15 510, 1194, 1194.2, 1197 and California Code of Regulations, Title 8, §11070, seeking unpaid
16 overtime and minimum wages, penalties, and reasonable attorney’s fees and costs.

17 4. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant
18 to California Business & Professions Code §§17200-17208 also seeks all monies owed but
19 withheld and retained by Defendants to which Plaintiff and members of the Class are entitled.

20 **PARTIES**

21 **A. Plaintiff**

22 5. Venue as to each defendant is proper in this judicial district, pursuant to California
23 Code of Civil Procedure §395. Defendants operate and do business in California, and each
24 defendant is within the jurisdiction of this court for service of process purposes. The unlawful acts
25 alleged herein have a direct effect on Plaintiff and those similarly situated within the State of
26 California. Defendants employ numerous Class Members in the State of California.

27 6. Plaintiff, Ms. Luviano, is a resident of the State of California. At all relevant
28 times herein, she has been employed by Defendants as a non-exempt employee in California.

1 **B. Defendants**

2 7. Defendant, Cargill, a Delaware corporation, is a processor and distributor of fresh
3 beef, pork, turkey, and other cooked and marinated meat products within the State of California.
4 Cargill employed Plaintiff and similarly situated persons within the State of California.

5 8. The true names and capacities, whether individual, corporate, associate, or
6 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
7 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
8 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants
9 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
10 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
11 capacities of the defendants designated hereinafter as DOES when such identities become known.

12 9. Plaintiff is informed and believes, and based thereon alleges, that each defendant
13 acted in all respect pertinent to this action as the agent of the other defendant, carried out a joint
14 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
15 legally attributable to the other defendants.

16 **FACTUAL BACKGROUND**

17 10. Defendants on multiple occasions have had a pattern and practice of not
18 compensating Plaintiff and other similarly situated employees wages for all time worked,
19 including overtime wages, as a result of requiring Plaintiff and other California non-exempt
20 employees to wait in line for COVID-19 temperature checks prior to the start of their shift and not
21 compensating them for this work time. That is, Plaintiff and other non-exempt employees were
22 required to wait in line and undergo temperature checks for COVID-19 prior to the start of their
23 shift. Plaintiff and other non-exempt employees could not use this time for their own purposes. As
24 such, Cargill exercised sufficient control over Plaintiff and other non-exempt employees during
25 these required temperature checks and owes them wages for this time.

26 11. Plaintiff and other similarly situated non-exempt employees or former non-exempt
27 employees at all times pertinent hereto were not exempt from the overtime provisions of California
28 law, and the implementing rules and regulations of the IWC California Wage Orders.

12. Defendants on multiple occasions have failed to comply with Labor Code §226(a) by not providing itemized wage statements accurately showing, including but not limited to, total hours worked and all earned wages at applicable rates.

13. At the time Plaintiff's employment and the employment of other former non-exempt employees of Defendants ended, Defendants willfully failed to pay wages for all time worked.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action on behalf of himself, and all others similarly situated, as a class action pursuant to California Code of Civil Procedure §382. Plaintiff seeks to represent three Classes composed of and defined as follows:

Non-Exempt Employee Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Non-Exempt Employee Class").

Late Pay Class

All former employees of Defendants within the State of California at any time commencing three (3) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who did not receive all their wages upon termination and or resignation of their employment (collectively referred to as "Late Pay Class").

Wage Statement Class

All current and former employees of Defendants within the State of California, to whom, at any time commencing one (1) year preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, were provided with wage statements (collectively referred to as "Wage Statement Class").

15. Plaintiff reserves the right under California Rules of Court Rule 3.765(b), to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

16. This action has been brought and may properly be maintained as a class action under the provisions of California Code of Civil Procedure §382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

1 **A. Numerosity**

2 17. The potential members of the Class as defined are so numerous that joinder of all
3 the members of the Class is impracticable. While the precise number of Class Members has not
4 been determined at this time, Plaintiff is informed and believes that there are over 100 Class
5 Members employed by Defendants within the State of California.

6 18. Accounting for employee turnover during the relevant periods necessarily increases
7 this number. Plaintiff alleges Defendants' employment records would provide information as to
8 the number and location of all Class Members. Joinder of all members of the proposed Class is
9 not practicable.

10 **B. Commonality**

11 19. There are questions of law and fact common to Class Members. These common
12 questions include, but are not limited to:

- 13 (1) Did Defendants violate Labor Code §1194 by not compensating Class
14 Members overtime wages?
- 15 (2) Did Defendants violate Labor Code § 1194 and 1197 by not paying Class
16 Members minimum wages for all hours worked?
- 17 (3) Did Defendants violate Labor Code §§ 201 and 202 by failing to pay Class
18 Members upon termination or resignation all wages earned?
- 19 (4) Are Defendants liable to Class Members for penalty wages under Labor
20 Code § 203?
- 21 (5) Did Defendants violate Labor Code § 226(a) by not furnishing Class
22 Members with accurate wage statements?
- 23 (6) Did Defendants violate the Unfair Competition Law, Business and
24 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
25 herein?
- 26 (7) Are Class Members entitled to restitution of penalty wages under Business
27 and Professions Code § 17203?
- 28 (8) Are Class Members entitled to attorney's fees?

1 (9) Are Class Members entitled to interest?

2 **C. Typicality**

3 20. The claims of Plaintiff herein alleged are typical of those claims which could be
4 alleged by any member of the classes, and the relief sought is typical of the relief which would be
5 sought by each of the members of the classes in separate actions. Plaintiff and all members of the
6 Classes sustained injuries and damages arising out of and caused by Defendants' common course
7 of conduct in violation of laws and regulations that have the force and effect of law and statutes as
8 alleged herein.

9 **D. Adequacy of Representation**

10 21. Plaintiff will fairly and adequately represent and protect the interests of the
11 members of the Classes. Counsel who represents Plaintiff is competent and experienced in
12 litigating wage and hour class actions.

13 **E. Superiority of Class Action**

14 22. A class action is superior to other available means for the fair and efficient
15 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
16 questions of law and fact common to the Class predominate over any questions affecting only
17 individual members of the Class. Each member of the Class has been damaged and is entitled to
18 recovery by reason of Defendants' illegal pattern and practice of failing to pay wages for all time
19 worked, failing to provide accurate itemized wage statements, and failing to pay all wages due
20 upon termination and/or resignation, as described herein.

21 23. Class action treatment will allow those similarly situated persons to litigate their
22 claims in the manner that is most efficient and economical for the parties and the judicial system.
23 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
24 action that would preclude its maintenance as a class action.

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FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(By Plaintiff and the Class Against All Defendants)

24. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

25. At all times relevant to this complaint, California Labor Code §510 was in effect and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Overtime pay is computed based on the regular rate of pay. The regular rate of pay includes many different kinds of remuneration. Under California law, the determination of regular rate of pay for purposes of determining overtime pay must include the employee’s commissions, bonuses, or other non-hourly compensation.

26. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class regularly worked for Defendants during shifts that consisted of more than eight hours in a work day and/or more than forty hours in a work week and on multiple occasions these employees have not been paid overtime wages as a result of requiring Plaintiff and other California non-exempt employees to wait in line for COVID-19 temperature checks prior to the start of their shift.

27. Accordingly, by requiring Plaintiff and Non-Exempt Employee Class to work in excess of eight hours per day and/or forty hours per week and without properly compensating overtime wages, as described herein, Defendants willfully violated the provisions of Labor Code §1194.

28. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt Employee Class have been deprived of overtime wages in an amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney’s fees, and costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and Civil Code §3287.

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(By Plaintiff and the Class Against All Defendants)

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THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(By Plaintiff and the Class Against All Defendants)

35. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

36. At all relevant times, Plaintiff and other members of the Late Pay Class were employees of Defendants covered by Labor Code §§ 201 and 202.

37. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of the Late Pay Class were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

38. Defendants failed to pay Plaintiff and other members of the Late Pay Class all wages earned and unpaid prior to termination in accordance with Labor Code §§ 201 or 202. Plaintiff and other members of the Late Pay Class are informed and believe and thereon allege that within the applicable limitations period, Defendants had a pattern and practice of not paying upon termination, the wages owed to them as a consequence of failing to pay non-exempt employees for all hours worked, as described herein.

39. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages earned prior to termination in accordance with Labor Code §§ 201 and 202 was wilful. Defendants had the ability to pay all wages earned by Plaintiff and other members of the Late Pay Class at the time of termination in accordance with Labor Code §§ 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code §§ 201 and 202.

40. Pursuant to Labor Code §§ 201 and 202 Plaintiff and other members of the Late Pay Class are entitled to all wages earned prior to termination that Defendants failed to pay them.

41. Pursuant to Labor Code § 203, Plaintiff and other members of the Late Pay Class

1 are entitled to penalty wages from the date their earned and unpaid wages were due, upon
2 termination, until paid, up to a maximum of 30 days.

3 42. As a result of Defendants' unlawful conduct Plaintiff and other members of the
4 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
5 paid for all wages earned prior to termination.

6 43. As a result of Defendants' unlawful conduct Plaintiff and the other members of the
7 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
8 paid all penalty wages owed under Labor Code § 203.

9 44. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the other members of the
10 Late Pay Class are entitled to recover the full amount of their unpaid wages, penalty wages under
11 Labor Code § 203, reasonable attorney's fees, and costs of suit. Pursuant to Labor Code § 218.6 or
12 Civil Code § 3287(a), Plaintiff and the other members of the Late Pay Class are entitled to recover
13 prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

16 **(By Plaintiff and the Class Against All Defendants)**

17 45. Plaintiff realleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs of this Complaint as though fully set forth herein.

19 46. At all relevant times, Plaintiff and the other members of the Wage Statement Class
20 were employees of Defendants covered by Labor Code § 226.

21 47. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage
22 Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages,
23 an accurate itemized statement showing gross wages earned, net wages earned, all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at each
25 hourly rate by the employee.

26 48. Defendants failed to provide Plaintiff and the other members of the Wage
27 Statement Class accurate itemized wage statements in accordance with Labor Code § 226(a).

28 ///

1 49. Plaintiff and the other members of the Wage Statement Class are informed and
2 believe and thereon allege that at all relevant times, Defendants maintained and continue to
3 maintain a policy and practice of issuing wage statements that do not show, including but not
4 limited to, all hours worked and all earned wages and pay due for all hours worked at applicable
5 rates of pay. Defendants' practices resulted and continue to result in, the issuance of Wage
6 Statements to Plaintiff and other members of the Class that do not comply with the itemization
7 requirements.

8 50. Defendants' failure to provide Plaintiff and other members of the Wage Statement
9 Class with accurate Wage Statements was knowing and intentional. Defendants had the ability to
10 provide Plaintiff and the other members of the Wage Statement Class with accurate Wage
11 Statements, but intentionally provided wage statements that Defendants knew were not accurate.

12 51. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
13 Wage Statement Class have suffered injury. The absence of accurate information on their wage
14 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery
15 and mathematical computations to determine the amount of wages owed, causes difficulty and
16 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate
17 information about wages and amounts deducted from wages to state and federal government
18 agencies.

19 52. Pursuant to Labor Code § 226(e), Plaintiff and other members of the Wage
20 Statement Class are entitled to recover \$50 for the initial pay period during the period in which
21 violation of Labor Code § 226 occurred and \$100 for each violation of Labor Code § 226 in a
22 subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee.

23 53. Pursuant to Labor Code § 226(e) and § 226(g), Plaintiff and the other members of
24 the Wage Statement Class were entitled to recover the full amount of penalties due under Labor
25 Code § 226(e) reasonable attorney's fees and costs of suit.

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FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

(By Plaintiff and Class Members Against All Defendants)

54. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

55. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business & Professions Code § 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the state of California that comply with their obligations to compensate employees in accordance with the Labor Code.

56. As a result of Defendants' unfair competition as alleged herein, Plaintiff and similarly situated Class Members have suffered injury in fact and lost money or property. Plaintiff and similarly situated Class Members have been deprived from not being compensated wages for all hours worked, as described herein.

57. Pursuant to Business & Professions Code § 17203, Plaintiff and similarly situated Class Members are entitled to restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest which Defendants failed to pay them but withheld and retained for themselves. Restitution of the money owed to Plaintiff and similarly situated Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

58. Plaintiff and similarly situated Class Members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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PRAYER

WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for judgment against Defendants as follows:

A. An order certifying that Plaintiff may pursue his claims against Defendants as a class action on behalf of the Class Members;

B. An order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;

C. Penalties for inaccurate wage statements under Labor Code §226(e);

D. Damages for unpaid wages under Labor Code §§201 or 202;

E. Damages for unpaid penalty wages under Labor Code §203;

F. Liquidated damages for unpaid minimum wage;

G. Damages for unpaid overtime wages under Labor Code §1194;

H. Restitution under Business and Professions Code §17203;

I. Pre-judgment interest;

J. Costs;


K. Reasonable attorney's fees; and

L. Such other and further relief as the Court deems just and proper.

DATED: March 27, 2023

THE NOURMAND LAW FIRM, APC

By:



Michael Nourmand, Esq.
James A. De Sario, Esq.
Ivan P. Medina, Esq.
Attorneys for Plaintiff

EXHIBIT B



04/24/2023

Cargill Meat Solutions Corporation
 Kristin Mitchell
 Cargill
 15407 McGinty Road West, MS24
 Wayzata MN 55391

SERVICE OF PROCESS NOTICE

Item: 2023-369

The following is a courtesy summary of the enclosed document(s). **ALL information should be verified by you.**

Note: Any questions regarding the substance of the matter described below, including the status or how to respond, should be directed to the contact set forth in line 12 below or to the court or government agency where the matter is being heard.

1.	Entity Served:	Cargill Meat Solutions Corporation
2.	Title of Action:	Jasmine Luviano, on behalf of herself and all others similarly situated vs. Cargill Meat Solutions Corporation, et al.
3.	Document(s) Served:	Summons Class Action Complaint for Damages and Restitution Notice of Case Assignment and Notice of Hearing Case Management Statement
4.	Court/Agency:	San Joaquin County Superior Court
5.	State Served:	California
6.	Case Number:	STK-CV-UOE-2023-3094
7.	Case Type:	Violations of California Labor Codes
8.	Method of Service:	Hand Delivered
9.	Date Received:	Friday 04/21/2023
10.	Date to Client:	Monday 04/24/2023
11.	# Days When Answer Due: Answer Due Date:	30 Sunday 05/21/2023 CAUTION: Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of the service in their records matches the Date Received.
12.	Sop Sender: (Name, City, State, and Phone Number)	The Nourmand Law Firm, APC Beverly Hills, CA 310-553-3600
13.	Shipped To Client By:	Email Only with PDF Link
14.	Tracking Number:	
15.	Handled By:	051
16.	Notes:	Also Attached: * Civil Case Cover Sheet, etc.

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At ComputerShare, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by United Agent Group Inc.

EXHIBIT C

Jason Barsanti (SBN 235807)

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COZEN O'CONNOR

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Attorneys for Defendant

CARGILL MEAT SOLUTIONS CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

JASMINE LUVIANIO, on behalf of herself
and all others similarly situated

Plaintiff,

vs.

CARGILL MEAT SOLUTIONS
CORPORATION, a Delaware Corporation;
And DOES 1 - 100, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-0003094

ASSIGNED FOR ALL PURPOSES TO
JUDGE Jayne Lee
DEPARTMENT 10C

**DEFENDANT CARGILL MEAT SOLUTIONS
CORPORATION'S ANSWER TO CLASS
ACTION COMPLAINT FOR DAMAGES AND
RESTITUTION**

Date of first filing: March 29, 2023

Defendant CARGILL MEAT SOLUTIONS CORPORATION (“Defendant”), hereby answers the unverified Putative Class Action Complaint (the “Complaint”) brought by Plaintiff JASMINE LUVIANIO (“Plaintiff”) and on behalf of all others similarly situated, as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure § 431.30(d), Defendant denies generally each and every allegation contained in the Complaint and further denies that Plaintiff or the allegedly similarly situated employees she purports to represent, suffered any harm, injury, damage, or loss in any amount whatsoever by reason of any acts or omissions of Defendant, and further denies that Plaintiff, or the similarly situated employees she purports to represent, are entitled to any legal or equitable relief in any amount or manner whatsoever from Defendant.

AFFIRMATIVE DEFENSES

For and as a separate and affirmative defense to each and every claim for relief set forth in the Complaint, Defendant alleges as follows.

For purposes of these affirmative defenses, the term “Plaintiff” incorporates and includes Plaintiff Jasmine Luviano and/or similarly situated employees of Defendant whom she purports to represent.

FIRST AFFIRMATIVE DEFENSE

(Statute of Limitations)

That some or all of Plaintiff’s claims and/or some or all of the claims of the similarly situated employees she purports to represent are barred in whole or in part by the applicable statutes of limitations, including but not limited to, those limitations set forth in California Code of Civil Procedure §§ 338, 340, 343 and California Labor Code § 203.

SECOND AFFIRMATIVE DEFENSE

(Laches)

The Complaint, and each purported cause of action alleged therein, is barred in whole or in part by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

Defendant is informed and believes, and on this basis alleges, that Plaintiff and/or the similarly situated employees she purports to represent are estopped by their own actions and conduct from asserting any cause of action against Defendant. The following allegations are likely to have evidentiary support after a reasonable opportunity to conduct further investigation and/or discovery: Plaintiff and/or the similarly situated employees she purports to represent, by either their statements or conduct, have caused Defendant to believe something to be true and to act on that belief.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

Defendant is informed and believes that Plaintiff and/or the similarly situated employees she purports to represent have engaged in conduct and activity sufficient to constitute waiver of any right to assert the claims upon which he or they now seek relief. The following allegations are likely to have evidentiary support after a reasonable opportunity to conduct further investigation and/or discovery: Plaintiff and/or the similarly situated employees she purports to represent had knowledge of an existing right and intended to waive or forego that right through his or their words and/or conduct.

FIFTH AFFIRMATIVE DEFENSE

(Consent)

Defendant is informed and believes, and on this basis allege, that Plaintiff and/or the similarly situated employees she purports to represent are unable to state a cause of action against Defendant because Plaintiff and/or the similarly situated employees she purports to represent consented to any and all action allegedly taken by Defendant.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

That some or all of Plaintiff's and/or some or all of the claims of the allegedly aggrieved/similarly situated she purports to represent are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

While denying any wrongdoing or damage to Plaintiff and/or the similarly situated employees she purports to represent, Defendant alleges that the claimed recovery is barred or diminished by a failure to mitigate.

EIGHTH AFFIRMATIVE DEFENSE

(Offset)

Defendant is entitled to an offset against any relief due Plaintiff and/or the similarly situated persons she purports to represent for payments made to which Plaintiff and/or the similarly situated persons she purports to represent to which they were not legally entitled.

NINTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

Plaintiff's Complaint is barred, in whole or in part, under the avoidable consequences doctrine. Defendant had procedures in place for reporting any issues, which Plaintiff and/or the similarly situated persons she purports to represent unreasonably failed to use, and the reasonable use of Defendant's preventive and corrective measures would have prevented some or all of the harm Plaintiff and/or the similarly situated persons they purports to represent allegedly suffered.

TENTH AFFIRMATIVE DEFENSE

(Actions Authorized)

To the extent, if any, that Defendant withheld or diverted any portion of any wages of any employee, Defendant was authorized to do so pursuant to California Labor Code § 224.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Comply With Directions)

Plaintiff's Complaint is barred by California Labor Code § 2856 to the extent that Plaintiff and/or any of the similarly situated employees she purports to represent, failed substantially to comply with all the directions of Defendant, and such failure proximately caused the alleged losses for which they seek relief.

TWELFTH AFFIRMATIVE DEFENSE

(Good Faith Dispute)

For and as a separate and affirmative defense to the fourth cause of action in the Complaint, Defendant alleges that Plaintiff's claims based on § 203 of the California Labor Code fail because Defendant has defenses, based on law or equity which, if successful, would preclude any recovery on the part of Plaintiff and/or any of the similarly situated employees she purports to represent.

THIRTEENTH AFFIRMATIVE DEFENSE

(Lack of Standing - Individual)

Plaintiff and/or the similarly situated employees she purports to represent lack standing under the California Labor Code to bring some or all of the claims alleged against Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

(Release)

To the extent Plaintiff and/or the similarly situated employees she purports to represent have executed, or are subject to, a settlement agreement or release encompassing the claims alleged in the Complaint, their claims are barred by that release.

FIFTEENTH AFFIRMATIVE DEFENSE

(Damaged by Own Conduct)

Defendant alleges that, should it be determined that Plaintiff and/or the similarly situated employees she purports to represent have been damaged, then said damages were proximately caused by their own conduct.

SIXTEENTH AFFIRMATIVE DEFENSE

(Failure to Return to Office for Payment of Wages)

For and as a separate and affirmative defense to the third cause of action in the Complaint, Defendant alleges that the claims of Plaintiff and/or the similarly situated employees she purports to represent for waiting time penalties should be denied because they failed to return to the location in which they worked for payment of wages as required by the California Labor Code, including but not limited to section 208 thereto.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Good Faith – Reliance on Legislative or Administrative Authority)

Defendant's alleged failure to pay Plaintiff and/or the similarly situated employees she purports to represent wages, if at all, was in good faith in conformity with and in reliance on an administrative regulation, order, ruling, approval, interpretation, administrative practice, and/or enforcement policy of the California's Industrial Welfare Commission, United States Department of Labor, and/or other governmental agencies.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Willful Actions)

For and as a separate and affirmative defense to the third cause of action in the Complaint, Defendant alleges that Plaintiff's claims based on § 203 of the California Labor Code fail because Defendant's actions were not "willful" under California Labor Code section 203.

NINETEENTH AFFIRMATIVE DEFENSE

(Good Faith)

Defendant alleges that Plaintiff and/or the similarly situated employees she purports to represent were treated fairly and in good faith, and that all actions taken with regard to them by Defendant were taken for lawful business reasons and in good faith.

TWENTIETH AFFIRMATIVE DEFENSE

(Reasonable Belief of No Violation)

Defendant alleges that any violation of the California Labor Code or of a Wage Order of the Industrial Welfare Commission was an act or omission made in good faith, and that in any participation in such acts, Defendant had reasonable grounds for believing that the act or omission was not a violation of the California Labor Code or any Wage Order of the Industrial Welfare Commission.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Defendant's Conduct Not Willful or Intentional)

Defendant alleges that assuming, *arguendo*, that Plaintiff and/or the similarly situated employees she purports to represent are entitled to additional compensation, Defendant has not willfully or intentionally failed to pay any such additional compensation to Plaintiff and/or the similarly situated employees she purports to represent to justify any awards of penalties or fees.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Injury As A Result Of Violation of Labor Code § 226)

For and as a separate and affirmative defense to the fourth cause of action in the Complaint, Defendant alleges that neither Plaintiff nor and/or the similarly situated employees she purports to represent have suffered any injury as a result of any alleged violation of Labor Code section 226 and therefore are barred from recovering penalties.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Improper Remedy Sought – 17200)

As a separate and affirmative defense to Plaintiff's fifth cause of action under Business & Professions Code sections 17200, *et seq.*, Defendant alleges that it is barred to the extent that it seeks a remedy other than restitution or injunctive relief.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Abstention/Preemption – 17200)

As a separate and affirmative defense to Plaintiff's fifth cause of action under Business & Professions Code sections 17200, *et seq.*, Defendant alleges that its conduct is regulated by a detailed and comprehensive enforcement scheme established under California law and Plaintiff's claims under Business & Professions Code sections 17200, *et seq.* purport to establish an impermissible form of state court regulations.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Absolute Bar to Relief – 17200)

As a separate and affirmative defense to Plaintiff's fifth cause of action under Business & Professions Code sections 17200, *et seq.*, Defendant alleges that Plaintiff's cause of action for Business & Professions Code sections 17200, *et seq.* cannot be used to state a cause of action the gist of which is absolutely barred under the California Labor Code.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

As a separate and affirmative defense to Plaintiff's fifth cause of action under Business & Professions Code sections 17200, *et seq.*, Defendant alleges that Plaintiff's restitution remedy is barred because they have an adequate remedy under the California Labor Code.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Equitable Relief Barred)

While denying any wrongdoing or damage to Plaintiff and the putative class, to the extent that Plaintiff makes claims for injunctive and other equitable relief, those claims are barred because Plaintiff has an adequate and complete remedy at law.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Conflicts of Interest)

Certain of the interests of one or more sub-groups of the members of the alleged class of persons Plaintiff purport to represent are in conflict with certain of the interests of one or more other sub-groups of the members of the alleged class of persons which Plaintiff purports to represent.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Preemption)

The Complaint, and each purported cause of action alleged therein, is preempted, in whole or in part, by a federal, state or local law.

THIRTIETH AFFIRMATIVE DEFENSE

(Class Action Requirements)

Plaintiff's Complaint is barred because Plaintiff cannot meet the requirements to certify a class for the claims in the Complaint, including but not limited to, (1) the proposed class is not sufficiently numerous or ascertainable; (2) common issues of law and fact do not predominate; (3) the

claims of the proposed class representatives are not typical of the class; (4) the proposed class representatives cannot adequately represent the class; and, (5) a class action is not the superior means to resolve the litigation.

ADDITIONAL DEFENSES

Defendant presently has insufficient knowledge or information upon which to form a belief whether there may be additional, as yet unstated, defenses and reserves the right to assert additional defenses in the event that discovery indicates that such defenses are appropriate.


PRAYER FOR RELIEF

WHEREFORE, Defendant prays as follows:

1. Plaintiff take nothing by the Complaint and the Complaint be dismissed with prejudice;
2. That judgment be entered in favor of Defendant on all claims;
3. For costs of suit and reasonable attorneys' fees incurred herein; and
4. For such other and further relief as this Court deems proper.

Dated: May 22, 2023

COZEN O'CONNOR

By: 

Jason Barsanti
Brett Greving
Attorneys for Defendant
CARGILL MEAT SOLUTIONS
CORPORATION

PROOF OF SERVICE

I, Julia A. Neymark, declare that I am employed at Cozen O'Connor, whose address is 101 Montgomery St, Suite 1400, San Francisco, CA 94104; I am over the age of eighteen (18) years and am not a party to this action. On the below date, by the method noted below, I served the following document(s):

DEFENDANT CARGILL MEAT SOLUTIONS CORPORATION'S ANSWER TO CLASS ACTION COMPLAINT FOR DAMAGES AND RESTITUTION

on the interested parties in this action by placing a true and correct copy thereof

Michael Nourmand
James A. De Sario
Ivan P. Medina

Attorney for Plaintiff: *Jasmine Luviano*

THE NOURMAND LAW FIRM, APC
8822 West Olympic Boulevard
Beverly Hills, CA 90211

Tel: (310) 553-3600
Fax: (310) 553-3603

☒ **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the ordinary course of business for collection and mailing on this date at Cozen O'Connor, 101 Montgomery St, Suite 1400, San Francisco, CA 94104. I declare that I am readily familiar with the business practice of Cozen O'Connor for collection and processing of correspondence for mailing with the United States Postal Service and that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

☒ **BY ELECTRONIC MAIL:** By sending a portable document format (pdf) copy of the documents to email address:

mnourmand@nourmandlawfirm.com; jdesario@nourmandlawfirm.com

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: May 22, 2023



Julia A. Neymark

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA

County of San Joaquin
180 E Weber Avenue
Stockton, CA 95202

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING

Case Number: **STK-CV-UOE-2023-0003094**

A Case Management Conference has been scheduled for your case as indicated below. A copy of this information must be provided with the complaint or petition, and with any cross-complaint that names a new party to the underlying action. Disregard hearing date if that date has expired.

Hearing: Case Management Conference	Date: 08/28/2023	Time: 8:30 AM Department:10C
JUDGE	COURT LOCATION	PHONE Numbers:
THIS CASE HAS BEEN ASSIGNED TO JUDGE JAYNE LEE IN DEPARTMENT 10C FOR ALL PURPOSES, INCLUDING TRIAL	Stockton	Stockton: 209-992-5693 Lodi: 209-992-5522

[X] ADR & Scheduling Information is available on the court website @ sjcourts.org/self-help

1. You must:

- a. **Serve** all named defendant's and file proofs of service on those defendants with the court Within 60 days of filing of the complaint. (CRC 3.110)
- b. **File and serve** a completed Case Management Conference Statement (use of JC form CM-110 is mandatory) at least 15 days before the Case Management Conference.
- c. **Meet and Confer**, in person or by telephone, to consider each of the issues identified in CRC 3.727 no later than 30 calendar days before the date set for the Case Management Conference. (CRC 3.724)
- d. **Collection cases** are managed pursuant to CRC 3.740.

2. Case Management Conferences, Law and Motion and Ex Partes will be held remotely unless ordered otherwise. For telephonic appearance phone numbers, information and instructions visit @ <https://www.sjcourts.org/division/civil>.
3. If this case was eFiled, the plaintiff/petitioner or their attorney must access their copy of this notice and the issued summons for service from the court's case management system at the following link: cms.sjcourts.org/fullcourtweb/start.do.
4. **Courtesy Copies:** Courtesy copies must be submitted as outlined in Local Rule 3-117. Courtesy copies (only) may be placed in the drop boxes located on the 10th and 11th floor. Courtesy copies can also be placed in the drop box located outside of the courthouse.

Visit our website @ www.sjcourts.org for more information regarding civil cases, local rules, and forms.

Date: 03/29/2023

Trudy Haley, Deputy Clerk

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Page 1 of 6

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for (date):
- b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one):*

- a. ☐ days *(specify number):*
- b. ☐ hours (short causes) *(specify):*

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. E-mail address:
- f. Fax number:
- g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section):*

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

- b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption):*

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PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

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PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☐ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

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PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT:	CASE NUMBER: _____
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17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

19. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain):*
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify):*

20. Total number of pages attached *(if any):* _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <div style="display: flex; justify-content: space-between;"> <div>TELEPHONE NO.: EMAIL ADDRESS (Optional): ATTORNEY FOR (Name):</div> <div>FAX NO.:</div> </div>	COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN <div style="display: flex; justify-content: space-between; font-size: small;"> <div><input type="checkbox"/> Lodi Branch 315 W. Elm St. Lodi, CA 95240</div> <div><input type="checkbox"/> MANTECA Branch 315 E. Center St. Manteca, CA 95336</div> <div><input type="checkbox"/> TRACY Branch 475 E. 10th St. Tracy, CA 95376</div> <div><input type="checkbox"/> STOCKTON Branch 222 E. Weber Ave. Stockton, CA 95202</div> </div>	
Plaintiff(s)/Petitioner(s):	
Defendant(s)/Respondent(s):	CASE NUMBER:

STIPULATION AND ORDER TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR)

Pursuant to California Rules of Court §3.726 the parties stipulate that all claims pursuant in this action shall be submitted to (select one):

☐ Voluntary Mediation

☐ Other (specify):

☐ Non-Binding Judicial Arbitration CCP 1141.12

☐ Binding Arbitration (private)

Case Type: _____

Is the Neutral you selected listed on the Court's Panel of Mediators? ☐ Yes ☐ No

Neutral's name and telephone number: _____/(_____)_____

Date/Time of ADR Session: _____/_____ a.m./p.m. Location of ADR Session: _____

Identify by name ALL individuals (litigants and attorneys) who will attend the ADR session:

Attorneys signing on behalf of their client(s) have been given the authority to stipulate to ADR. Original signatures required.

 Type or print name of ☐ Party without attorney ☐ Attorney for
☐ Plaintiff/Petitioner ☐ Defendant/Respondent

 (Signature)
 Attorney or Party without attorney

 Type or print name of ☐ Party without attorney ☐ Attorney for
☐ Plaintiff/Petitioner ☐ Defendant/Respondent

 (Signature)
 Attorney or Party without attorney

 Type or print name of ☐ Party without attorney ☐ Attorney for
☐ Plaintiff/Petitioner ☐ Defendant/Respondent

 (Signature)
 Attorney or Party without attorney

 Type or print name of ☐ Party without attorney ☐ Attorney for
☐ Plaintiff/Petitioner ☐ Defendant/Respondent

 (Signature)
 Attorney or Party without attorney

IT IS SO ORDERED: Dated: _____

 Judge of the Superior Court

An ADR Review Hearing is scheduled for _____ at _____ a.m/p.m. in Dept. No. _____.

In the event that the case is resolved and a dismissal-entire action, a notice of settlement or judgment is on file 5 days before the hearing, the ADR Hearing will be dropped and all appearances will be excused.

STIPULATION AND ORDER TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR)
 Sup Crt 441 (6/09)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address). Michael Nourmand, Esq.; Ivan P. Medina, Esq. SBN: 198439; 323360 THE NOURMAND LAW FIRM, APC 8822 West Olympic Boulevard, Beverly Hills, California 90211 TELEPHONE NO (310) 553-3600 FAX NO. (Optional) (310) 553-3603 E-MAIL ADDRESS ATTORNEY FOR (Name) Plaintiff, Jasmine Luviano	FOR COURT USE ONLY 2023 MAR 23 PM 3:27 TRUDY L. HALEY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN STREET ADDRESS 180 East Weber Avenue MAILING ADDRESS 180 East Weber Avenue CITY AND ZIP CODE Stockton, 95202 BRANCH NAME: Stockton Courthouse	
CASE NAME: Jasmine Luviano, et al. v. Cargill Meat Solutions Corporation, et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant. (Cal. Rules of Court, rule 3.402)	
STK-CV- <u>WDE</u> 2023- <u>3094</u>	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 5
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 27, 2023

Ivan P. Medina, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition



Superior Court of California, County of San Joaquin Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- *Indicating your preference on Case Management Statement form CM-110;
- *Filing the Stipulation and Order to Participate in Alternative Dispute Resolution (ADR) *local court form Sup Crt 441*; or
- *Agree to ADR at your initial Case Management Conference.

Questions? Call (209) 992-5693 and ask for the ADR Clerk,
email at adr@sjcourts.org or visit the court website at www.sjcourts.org

What is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) is the general term applied to a wide variety of dispute resolution processes which are alternatives to lawsuits. Trained impartial persons, called 'neutrals', resolve disputes or help parties resolve disputes without having to go to court. The most common forms of ADR are mediation and arbitration. There are several other types of ADR such as case evaluation, conciliations, settlement conferences, fact finding, mini-trials and summary jury trials. It is important to find the type or types of ADR that are most likely to resolve your dispute.

What are the Advantages of using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorney's fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What is the Disadvantage of using ADR?

- ***You may go to court anyway*** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.
- ***Cost*** – The neutral may charge a fee for their services.
- ***Timelines*** – Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in and ADR process.

What ADR options are available?

- **Mediation** – The Civil Mediation Program is a voluntary court-connected program designed to deliver high-quality affordable mediation services to attorneys and litigants in all general civil cases. Mediation gives litigants a voice in settlement decisions and thereby allows them to play a more direct role in managing the outcome of their own case. The Superior Court of California, County of San Joaquin, is pleased to offer this important and valuable option for resolution of litigation.
 - Mediation is an informal, confidential, flexible and non-binding process which a neutral person (mediator) helps the parties to understand the interest of everyone involved, and their practical and legal choices. The mediator does not decide the dispute, but helps the parties communicate so they can try to settle the dispute themselves. **Mediation leaves control of the outcome with the parties.**
 - Mediators are experienced attorneys who have completed a Court-approved formal mediation training program. A copy of the Civil Mediation Program Panelist is available on the court website at www.sjcourts.org
See Local Rule 3-123 for additional Civil Mediation Program information.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and makes a decision (award) to resolve the dispute. Arbitration normally is more informal and much speedier and less expensive than a lawsuit.
 - **Judicial Arbitration Program** (non-binding): The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award **and proceed to trial**. See Local Rule 3-122 for additional Judicial Arbitration information.
 - **Private Arbitration** (binding and non-binding): Occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.
- **Additional Information** regarding San Joaquin County Superior Court's ADR programs is available on the Court's website at www.sjcourts.org

APR 21 2023